IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 597 OF 2003

Jagdish Chander Sachdeva. ... Appellant.

V/s.

Royal Bombay Yacht Club
and others. ... Respondents.

Harish Jagtiyani i/b. Bharat Joshi
for the appellant.

A.K.Abhyankar with A.N.Parekh i/b. M/s.Crawford Bayley & Co. for the respondents.

CORAM : **V.C.DAGA, J.**

RESERVED ON : **24th September, 2004.**

PRONOUNCED ON : **1st October, 2004.**

JUDGMENT :

. The present appeal is directed against the order dated 2nd June, 2003 passed in Notice of Motion No.3963 of 2002 in S.C.Suit No.6854 of 2002 by the Bombay City Civil Court, whereby the notice of motion was rejected with costs.

The Factual Backdrop :
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2. The factual backdrop, in nutshell, is that the appellant is a permanent member of the respondent club, viz., Royal Bombay Yatch Club

(hereinafter referred to as "the Club" for short) since 1971. According to him, his membership entitled him to allotment of a room for long term stay in the club premises. In 1973, he was allotted room Nos.49/50 and since then he has been residing there till date. He married in the year 1992. His wife has also been residing with him in the said room since her marriage. According to the appellant, this is the only place of him for his residence in Mumbai.

3. The genesis of the dispute, which is the subject matter of the present litigation, is that the appellant did not shift, for the period from May 2002 to November 2002, from room Nos.33 and 34, which were temporarily allotted to him whilst his permanent room Nos.49/50 was under repairs and renovation. This led to termination of his membership under rule 43(vii) of the Club rules. This action of the Club is the subject matter of suit filed in the City Civil Court at Bombay. The notice of motion to seek interim relief came to be rejected. This rejection is the subject matter of this appeal at the instance of the appellant, a Club member.

Rival Contentions :
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4. The rival contentions of the parties hereto in relation to this dispute are: According to the appellant, his original room Nos. 49/50 had not been rendered habitable, after the so-called repairs and this prevented him from re-shifting to these rooms from room Nos.33 and 34 which were temporarily allotted to him. According to the appellant, the big whole made by rats on the bedroom door was not repaired. The flooring of the room remained shabby. The glossy tiling in the bath room was slippery and dangerous and the bathtub being small was unfit for taking bath and the toilet was also not properly tiled. The wire mesh on windows to prevent entry of rodents, was not fixed. He was not provided with a double bed even though his membership entitled him to double occupancy. The appellant complained to the Club about above stated repairs since 1997 but were not carried out.

5. According to the Club, the appellant was merely putting up some lame excuses to justify his stay in more expensive accommodation than the original rooms allotted to him. Failure on the part

of the appellant to shift to room Nos.49/50 was the ground for expelling him from Club by invoking rule 43(vii) of the Club Rules.

6. Copious correspondence in this regard appears to have been exchanged between the appellant and the Club. If one turns to the correspondence between the parties, repeatedly the appellant was asked to shift to room Nos.49/50 from room Nos.33/34, which were temporarily allotted to him. He did not shift for one or the other reason. He went on giving some lame excuses for not shifting from room Nos.33/34 and this conduct of the appellant compelled the Club authorities to take action against him.

7. The correspondence between the parties, prima facie; is not in dispute. The repeated requests to the appellant at the instance of the Club to shift from room Nos.33/34 to room Nos.49/50 is also prima facie not in dispute. Avoidance on the part of the appellant to shift from room Nos.33/34 to room Nos.49/50 is a prima facie picture emerging from the voluminous correspondence between the parties which ensued between them when they were not on war with each other. Therefore, prima facie;

it reflects a true picture prevailing at the relevant time.

8. The authorities of the Club having lost their patients, appears to have resolved to give the appellant a choice to select any two adjacent rooms of his choice on third or fourth floor at the same compensation as and in lieu of room Nos.49/50. This resolution was passed by the general committee of the Club in its meeting held on 23rd February, 2000. Appellant did not accept this offer. After about one and half years, the following resolution came to be passed on 24th August, 2001:

> "(a) Room No.33 and 34 are being allotted to you at the same compensation as Room 49/50 during the period repairs are being undertaken.
>
> (b) You will move back to room 49/50 upon receipt of intimation from us, as soon as the repairs as envisaged by the management are completed.
>
> (c) You will comply with the said requirement without delay or objection."

9. The appellant did not comply with the aforesaid resolution. Ultimately, in a meeting held on 11th September, 2002 the impugned resolution for expulsion of the appellant was passed in a meeting attended by eight committee members elected on 4th September, 2002.

10. The above action of the Club expelling the appellant from the Club is a subject matter of challenge in the suit filed by the appellant being S.C.Suit No.6854 of 2002 pending in the Court of Bombay City Civil Court at Mumbai. In the said suit, notice of motion for interim relief came to be moved. The interim relief in terms of prayer clause (a) was prayed, the text of which is reproduced hereinbelow:

> (a) Pending the hearing and final disposal of the suit, the Defendants, their office bearers, employees, agents, members be restrained from
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> (i) enforcing resolution of Defendant's General Committee dated 11.9.2002.
>
> (ii) vacating disturbing Plaintiff's use occupation and possession of rooms No.33/34, till rooms No.49/50, are re-allotted to Plaintiff after proper repairs and renovations, in Defendant's club building at Apollobunder, Shivaji Marg, Colaba, Mumbai.
>
> (iii) Withdrawing services and facilities to the Plaintiff.
>
> (iv) allotting room Nos.49/50, to any other member or guest.

11. Mr.Jagtiyani, learned senior counsel for the appellant in support of notice of motion submits that no show-cause-notice was issued to the

appellant by the Club before taking decision to expel him. No oral or written submissions of the appellant were called for or considered before passing of resolution to expel the appellant. He submits that it is not established by the Club that either the agenda for the meeting or detailed material on which the decision to expel was taken was circulated to all the committee members. According to him, the meeting wherein the impugned resolution was passed was merely an informal get-together to welcome newly elected eight members of the Club committee. Hence there was no occasion for the Club either to issue show-cause-notice or circulate necessary material to the committee members. He submits that none of the averments made in para Nos.25 and 69 as also in para Nos.27 and 28 of the plaint were denied by the Club. He further submits that the action of expulsion is in complete violation of the Club rules and principles of natural justice. Reliance is placed on the Club rules, namely, rules 42 and sub-rules (v) and (vii) of rule 43 which lay down procedure for expulsion of a Club member.

12. Mr.Jagtiyani further submits that the Club rules, namely, rules 42 and 43(vii) have been

flagrantly violated. That these rules clearly require that resolution to be passed in a meeting of general committee of the Club. In his submission, no such decision was ever taken in the meeting. He tried to put his own interpretation and construction on rule 43(vii) and canvassed that the procedure laid down in rule 42 was required to be read in rule 43(vii) of the rules of the Club. He further submits that on true construction of rule 43(vii), in absence of 2/3rd majority of the general committee as contemplated by rule 42, the appellant could not have been expelled under rule 43(vii). He submits that the action and the resolution of the Club are completely in violation of the Club rule and the principles of natural justice. According to him, the membership of the club is a contract of membership. Unwritten implied term thereof is that member could not be expelled without giving him fair opportunity of hearing. Reliance is placed on Dawkins v. Antrobus (1881) 17 Ch D 615; Fisher v. Keane (1878) 11 Ch D 853 and certain excerpts from the Administrative Law - H.W.R.Wade, sixth edition, page 501 were pressed into service to bring home his point.

13. Mr.Jagtiyani further urged that if the rule provides that a meeting of the committee must be specially summoned to consider the conduct of any member whom it is proposed to expel, it is not sufficient for the committee to take such a matter into consideration at an informal or ordinary meeting. He submits that provision for notice is so strict that it has been held that notice should not merely be posted up in the coffee room or library, but should be given by circular to all such members who do not habitually or daily use the club facility. The notice should state the object of the meeting with sufficient particularity. According to him none of these requirements of the principles of natural justice were followed by the Club. He submits that the resolution expelling the appellant is liable to be quashed and set aside.

14. Mr.Abhyankar, learned counsel for the Club tried to support the impugned order passed by the trial Court. He placed reliance on the correspondence between the parties and the resolution adopted by the Club. He submits that the trial Court rightly relied upon the exchange of correspondence between the parties and rightly came to the conclusion that there was no necessity of

granting further right of hearing to the appellant. He submits that several letters were given to the appellant. The Club had specifically notified the appellant their intended action. He further submits that considering the conduct of the appellant and his attitude to flop the directions of the Club in a best possible manner, the Club was left with no other alternative but to take action against him. He further submits that by no stretch of imagination it can be said that action of the Club is a hasty action. Almost for a period of more than one and half year the appellant was given opportunity to shift to his original rooms but he was not in a mood of listening to the directions of the Club. Thus, in his submission, in order to maintain discipline of the Club it became necessary to the Club to take action against the appellant. Mr.Abhyankar, therefore, submits that no inference at the hands of this Court is warranted.

Club Rules :
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15. Before considering rival submissions, it is necessary to look into the rules around which the entire controversy revolves.

Rule 42. Infraction of Rules and By-Laws by members/Associates.

The General Committee shall take immediate cognizance of any infraction of Rules or any Bye-Laws or Regulations made thereunder or any Circulars or directions issued or given thereunder. Any Member/Associate whose conduct in the Club or elsewhere shall, in the opinion of the General Committee, be conduct unbecoming a Gentleman/Lady, or whose conduct may become injurious to the character or interest of the Club, or endanger the harmony or affect the stability of the Club, or who had been expelled or removed from the membership of any Club or Association in Bombay or elsewhere for infraction of any Rule of that Club or Association, the General committee shall be entitled to expel such Member/Associate from the Membership/Associate ship of the Club or take such steps against him/her as it may deem fit. The General Committee may lay down restrictions on the exercise by the Member/Associate of any of the rights and privileges of a Member/Associate, including prohibition on the use of the Club premises, Chambers and/or other facilities for a stated period, or prohibit the Member/Associate from proposing, seconding or supporting any candidate for admission as a Member/Associate of any category to the Club, or entertain guests, or use of privileges with reciprocating Clubs, and/or imposing any other suitable restrictions. No resolution expelling a Member/Associate from the Membership/Associate ship of the Club or restricting the rights and privileges of a Member/Associate under this rule shall be valid unless 2/3rd of the members present at the meeting of the general committee specially called for the purpose, shall have voted in favour of a resolution (the minimum of such members voting shall be nine) and provided at least 14 days before the meeting of the general committee at which such resolution is proposed to be tabled the member/Associate concerned shall have been given notice thereof, and provided further that the member/Associate concerned at the meeting

and before passing such resolution shall have had an opportunity of giving orally or in writing any explanation or defence he/she might think fit. On the passing such resolution in the manners stated above, the member/Associate shall forthwith be deemed to be expelled from the membership/Associateship of the club and/or debarred from exercising the rights and privileges as a member/Associate of the club to the extent mentioned in the resolution. No appeal shall lie against the decision of the General Committee. Provided further, that nothing herein contained shall affect the right of the general Committee to expel a member/Associate in terms of the provision of any other rule.

Rule 43. Cessation of a membership/ Associateship.

A member/Associate shall cease and shall, be deemed to have ceased to be a member/Associate of the club-

(i) ....

(ii) ....

(iii) ....

(iv) ....

(v) Expulsion from the club as hereinabove provided under Rule 42;

(vi) ....

(vii) On a resolution of the General Committee in the case of any member/Associate, who having been given notice to do so has failed to vacate any portion of the club chambers or premises occupied by him/her. The provision of this clause shall operate in addition to and notwithstanding the provisions of the sub-clause (v) above.

Rival Interpretation of Rules :
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16. Mr.Jagtiyani, learned counsel for the appellant put his interpretation on the rules in the following words:

1. Rule 42 which deals with infraction of rules and by-laws by members is primarily concerned with the expulsion of the member for his/her unbecoming conduct. The rule provides for the observance of certain mandatory procedures such as a hearing preceded by a show cause to which the member must be given an opportunity to reply. It also contemplates that the expulsion shall only be by a two-third majority with a minimum stipulation of a nine-member quorum.

2. Rule 43 deals with cessation of membership for a variety of reasons which are self evident and includes in clause (v) the cessation of membership by way of expulsion as contemplated under rule 42. Thus, cessation/termination of membership is the genus of which expulsion is a species.

3. Sub-rules (i), (ii), and (vi) of rule 43 on a bare reading apply to situations which are self evident and the termination contemplated therein is automatic. However sub-rule (vii) which contemplates cessation of membership for failure to vacate any portion of the club is a departure from the other provisions of this rule in as much as the same does not operate automatically but takes effect on the fulfilment of certain stipulations as provided therein. These stipulations are -

(a) the passing of a resolution of the General Committee;

(b) prior notice to vacate having been given to the member.

4. Sub-rule (vii) significantly in addition to the provisions relating to expulsion as contemplated under rule 42. Thus, this sub-rule imports the provisions of rule 42 and the additional provisions of sub-rule (vii) have to be read conjointly with the provisions and procedural

requirements of rule 42. This would in effect mean that the cessation of membership for failure to vacate club premises would require two notices i.e. a notice to vacate as well as a show cause notice calling upon the member to justify his failure to vacate.

5. The phrase "notwithstanding the provisions of sub-clause (v) above" only means that the ingredient of expulsion for unbecoming conduct of a member as contemplated under rule 42 is not necessary to be established for sub-rule (vii) to take effect. In other words though a member may be expelled for failure to vacate any part of the club premises, unbecoming conduct on his part need not be proved. But for the managing committee to arrive at the conclusion that a member has failed to vacate any part of the club premises all other procedural requirements of rules 42 and 43 (vii) must be complied with. The rationale obviously is that a member should be given the opportunity to show just cause as to why he did not vacate the club premises or any part thereof.

6. This interpretation of rules 42 and 43 is harmonious and does not render any words used in either of the rules superfluous or otiose. Moreover, it is consistent with principles of natural justice for the consequences of an action taken under rule 43(vii) visits a member with serious civil consequences such as loss of membership as well as loss of reputation amongst club members.

17. Mr.Abhyankar, learned counsel for the Club tried to put his own interpretation on the above rules. He submits that rules 42 and 43 are independent of each other and apply in two different spheres. According to him, rule 42 applies in cases of Infraction of Rule and Bye laws by members/ associates and provides for the result of such infraction and also provides for the procedures to be adopted for taking action against a member/ associate or the imposition of any other restrictions on the exercise by the member/ associate of any of his rights and privileges. He submits that the proviso to this rule (last four lines of the rule) is explicit and saves the right

of the General Committee to take action under the provisions of any other rule.

18. Mr.Abhyankar points out that the rule 43 deals with cessation of membership/ associateship. In his submission, from the wordings of both the rules, it is clear that the term cessation is wider and would include expulsion as provided under rule 43(v).

19. Thus, expulsion from the Club amounts to cessation of membership by a deeming fiction. However, cessation of membership/ associateship does not amount to expulsion. In his submission, rule 43(vii) further makes it clear that for the action to be taken under this sub-rule, the procedure as provided in rule 42 is wholly inapplicable inasmuch as the words used are notwithstanding the provisions of sub-rule (v) above and in addition to it.

20. On the basis of the above, it is the submission of Mr.Abhyankar that rule 42 and rule 43 are independent of each other.

21. While taking recourse to rule 43, the procedure and requirement of rule 42 cannot be read

in them in view of non-obstante clause otherwise the provision of cessation of membership/ associateship would be rendered nugatory or redundant.

The Issue :
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22. Having heard the rival interpretation of the rules put by respective learned counsel for the rival parties, the only questions which need consideration at this stage are: whether the trial Court was justified in rejecting the notice of motion, seeking interim relief, moved by the appellant and whether the appellant/ plaintiff was entitled to temporary injunction in terms of notice of motion.

Determination of Issue :
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23. Law of injunction is well settled that granting or refusing to grant temporary injunction is governed by three well established principles, facie case; (b) whether balance of convenience is in their favour; and (c) whether petitioners will suffer irreparable injury, if the temporary injunction is not granted. The party who seeks aid of injunction must show that the act complained is in violation of his right and whether there is fair

and substantial question to be decided by the parties and there is bonafide contention between the parties. If such contentions are available, then relief needs to be granted. It is then duty of the Court to consider the material placed before granting or refusing to grant injunction and consider the documents, if any, before an order of interim relief can be passed. The prima facie case does not mean a case to succeed but a case which fairly needs an enquiry. At the same time while granting interim relief the court has also to take into account whether the interim relief is claimed in the aid of final relief so as to maintain status-quo ante or to preserve status of parties.

24. Keeping aforesaid principles in mind, if one turns to the case in hand, prima facie; it is not in dispute that from time to time the appellant was called upon by the Club to shift from room Nos.33/34 to room Nos.49/50. It is also not in dispute that from time to time opportunity to shift was given to him. It is also not in dispute that on one or the other pretext the appellant avoided to shift to his original rooms. It is also not in dispute that the Club has given a fair and reasonable time to the appellant to shift from room Nos.33/34 to his

original room Nos.49/50 and as last resort the impugned action was taken. Therefore, one would not dispute necessity of action taken by the Club against the appellant, who went to the extent of flouting the directions issued by the Club from time to time. However, mere breach of the direction given by the Club is not the end of the matter. If the effective action is required to be taken, then the Club has to follow certain procedural safeguards provided in the bye-laws of the Club so as to avoid any arbitrary action at its instance. Bye-laws of the Club are required to be followed to prevent any arbitrary or capricious action at the instance of the persons who are sitting in the driving seat of the Club. In order to find out what are the safeguards provided in the Club rules, one has to turn to rules 42 and 43 and to understand the length and breadth of the said rules and reciprocal obligations moving therefrom.

25. Rule 43, shorn of other inapplicable clauses, would project the following picture:

> **Rule 43. Cessation of a membership/ Associateship.**
>
> A member/Associate shall cease and shall, be deemed to have ceased to be a member/Associate of the club-

(i) ....

(ii) ....

(iii) ....

(iv) ....

(v) upon expulsion from the club as hereinabove provided under Rule 42;

(vi) ....

(vii) On a resolution of the General Committee in the case of any member/Associate, who having been given notice to do so has failed to vacate any portion of the club chambers or premises occupied by him/her. The provision of this clause shall operate in addition to and notwithstanding the provisions of the sub-clause (v) above.

26. Now, the question that needs to be answered is what is meant by the words "in addition" to and "notwithstanding the provisions of the sub-clause (v) above" used in clause (vii) of rule 43. Do they mean that the entire set of rules relating to the expulsion of the Member/ Associate become inapplicable when the cessation of membership of a Club member, under clause (vii) of rule 43 of the Club, is to be brought about?

27. In order to answer the issue one has to first understand and interpret what is meant by the words "in addition to". The dictionary meaning of the word "addition" as given in the Concise Oxford

Dictionary (Tenth Edition) is - the action or process of addition. Hence, it means to put something together, to add a new part or piece to something to improve it, something that is added for example; adding a clause to a contract in order to supplement it. Something that is added to something else to improve or to make it complete. As understood in this sense, "in addition to" denotes something in addition to an existing one.

28. The next question that I put unto myself is: "in addition" to what? Obvious answer seems to be: in addition to the grounds spelt out in clause (v) of rule 43. In other words, grounds of misconduct as mentioned in clause (v) of rule 43 stand supplemented by or added to clause (vii) of rule 43 for the purposes of cessation or termination of the membership of the club member. To put it simply, one more ground in addition to the grounds mentioned in clause (v) of rule 43 is made available to the Club for terminating the membership of its member in the event of an act or omission constituting misconduct specified therein. In my considered opinion, there is no other manner in which the words "in addition to" could be reasonably understood or interpreted.

29. With the above understanding, now let me switch over to understand the meaning of the word "Notwithstanding", a non-obstant clause. A non-obstant clause is invoked only in case of "irreconcilable conflict" where both clauses cannot be read in harmony with each other. The word "Notwithstanding" used in clause (vii) of rule 43 clearly means an additional misconduct, even though not mentioned it in clause (v) of rule 43. Clause (v) of rule 43 can be equated with that of legislation by incorporation, wherein subsequent amendments cannot be read unless specifically adopted. Hence addition of one more item of misconduct to clause (v) of rule 43 is resorted to so as to give an overriding effect to it over existing clause (v) which incorporates rule 42 just to avoid conflict between two provisions and to bring therein harmony. Thus, what is added is an additional instance or item or act of misconduct notwithstanding its absence in clause (v) of rule 43.

30. In the aforesaid premises, conjoint reading of the words "in addition to" and "notwithstanding" would clearly denote that the rule relating to the

cessation of membership given in clause (v) above (and more particularly stated in rule 42) is in a way extended or supplemented with clause (vii), irrespective of omission to mention the said item of misconduct in clause (v). Clause (v) has to be read in addition to clause (vii) of rule 43 with additional item of misconduct mentioned therein, irrespective of its absence in clause (v) of rule 43. In other words, clause (vii) has to be read in addition to clause (v) notwithstanding its omission in clause (v) of rule 43.

31. To put it simply, failure on the part of the member/ associate to vacate any portion of the Club Chambers or premises after having been served with notice is an additional ground made available to the Club to terminate membership of a member via clause (vii) of rule 43.

32. Now, the last question that needs consideration is about procedural part of rule 42. The Club contends that the procedure under rule 42 is not applicable in case of termination of membership as such it was not required to be followed. Per contra, appellant contends that its implementation is mandatory. In my considered view,

if the interpretation canvassed by the respondent - Club is to be accepted, it would create an anomalous situation. In that event, the member who is being inflicted with a lesser penalty of expulsion may be **for a limited period** (which is not prohibited) would get full fledged opportunity to defend himself via rule 42 based on principles of natural justice, whereas the member whose membership is being terminated **permanently** should get no such opportunity. The same rule, if considered from the point of view canvassed by Mr.Abhyankar that expulsion from the Club amounts to cessation of membership by a deeming fiction, then, the member whose membership is being terminated via. rule 42 i.e. by way of expulsion will get an opportunity to take part in a full fledged enquiry to defend himself and prove his innocence but the member whose membership is being terminated via clause (vii) would be deprived of the same treatment. Clauses (i) to (vi) of rule 43 postulate observations of principles of natural justice prior to the stage of penal action by one or the other authority. The interpretation and view canvassed by Mr.Abhyankar, if accepted will result in discriminatory treatment to similarly circumstanced members of the Club. Members committing misconduct would form one group.

They have to be treated as persons forming one group for the purposes of rule 43 of the Club rules. The main object of rule 43 is to punish a person for having committed an act of misconduct. If all clauses of rule 43 contemplate observance of principles of natural justice, then interpretation canvassed by Mr.Abhyankar would be contrary to the spirit of rule 43 itself. It would not advance the rule of law. The sweep of rule 43 in general would demonstrate that delinquent is entitled to get opportunity of hearing in every case falling in either of the classes of the said rule. As such, logically, it is reasonable to infer that opportunity of hearing cannot be denied to a person who is within the sweep of clause (vii) of rule 43. It would amount to practising discrimination amongst the same class or category of persons without reasonable cause. Thus, the action of the Club is, prima facie; contrary to clause (vii) of rule 43 for not following procedure laid down under rule 42 of the Club rules which stands incorporated in clause (v). Clause (v) stands incorporated in clause (vii) with additional item of misconduct notwithstanding its omission in clause (v) of rule 43 of the Club rules.

33. In the light of the aforesaid interpretation the impugned action of the Club is in breach of rule 43 and also violative of principles of natural justice engrafted therein.

34. The Hon'ble Supreme Court has consistently taken a view that Audi-Alteram Partem rule is applicable, whenever any order or action results in civil consequences. Violation thereof renders the action null and void. The concept that no one should be condemned or punished without hearing him sounds logical, just even to a layman and no detailed discussion is needed to explain it. It is a concept which incorporates justice, fair approach in administration of any institution. There can obviously be no fair play and justice when the decision concerning a person, one way or the other, is recorded affecting him without giving him an opportunity to have his say. Whatever may be the decision taken, an opportunity of hearing gives the person involved the satisfaction of participation in the decision that concerns him.

35. It is, no doubt, true that perusal of some of the decisions of various High Courts and the Apex Court show that requirement of this principle could be dispensed with within certain situations whereby not affording an opportunity of personal hearing, no prejudice could be said to have been caused to the affected parties. Some of such situations could be:

(i) where insistence on this requirement could paralyze administrative functioning;

(ii) where issue of prior notice and affording an opportunity of being heard can affect prompt action which is essential in broader public interest;

(iii) where the nature of action to be taken, its object and purpose and the nature of provisions under which action is to be taken warrant exclusion;

(iv) where the urgency of taking action demands its exclusion.

The facts of the case at hand do not spell out any of the situations warranting exclusion of opportunity of personal hearing. It is always open for the person who is facing charge of misconduct to persuade the punishing authority not to effect severe punishment and to establish that lesser punishment would meet the ends of justice. In my considered view, the appellant has established prima

facie case and prejudice by not following principles of natural justice by the Club. He is deprived of his right to persuade for lesser punishment. So far as the balance of convenience is concerned, one can visualise that the appellant, as on date, has no place to reside in Mumbai. For past more than two decades he is occupying Club accommodation. He has no infrastructure to set up separate home. If he is thrown out of the Club, it would be difficult for him to get immediate accommodation in south Mumbai. Keeping all these factors in mind, the balance of convenience has to be inferred in favour of the appellant. The possible injury, which the appellant would suffer on account of refusal of grant of injunction, hardly needs any elaborate discussion in the light of the facts stated herein. The Club, on the other hand, can be suitably protected by suitable order to secure their recovery. Thus all the three ingredients warranting grant of interim injunction are established by the appellant.

36. The impugned order is unsustainable as the same is based on erroneous interpretation of rule 43(vii) of the rules of the Club. The same is, therefore, liable to be set aside. Accordingly, the impugned order is set aside and the appellant is

held entitled to get injunction but not in absolute terms in terms of the prayer clauses of the notice of motion.

37. The attitude adopted by the appellant is also not free from blemish. He was also expected to adopt reasonable attitude. The necessity of taking action against the appellant is prima facie established by the Club. Appellant is succeeding in the appeal only on the basis of legal interpretation put by me on rule 43(vii) of the rules of the Club. Hence the order of injunction shall be in the following terms:

38. The respondent No.1 - Club, by an interim direction, issued in the nature of interim injunction is directed to restore club facilities to the appellant and his wife only, subject to the appellant's depositing Rs.5,00,000/- (rupees five lakh only) in addition to the amount already deposited and withdrawn by the Club with further condition that appellant shall also furnish security in the sum of Rs.10,00,000/- (rupees ten lakh only) by way of bank guarantee to be kept alive during pendency of the suit with liberty to the Club to apply for enhancement of the security by way of

further bank guarantee during the pendency of the suit. The Club shall also be free to withdraw Rs.5,00,000/- deposited by the appellant together with interest accrued on the earlier investment made by this Court.

39. Trial Court is directed to decide this suit as expeditiously as possible treating it as expedited suit without getting influenced by the observations made in this order, observations being prima facie.

. Appeal stands disposed of in terms of this order with no order as to costs.

40. At this stage, learned counsel for the respondent - Club prayed for stay of effect and operation of this order.

. Having heard rival parties and considering the issues involved in the appeal, the effect and operation of this judgment is stayed for a period of eight weeks. However, during the operation of this stay, the earlier order passed by learned single Judge (Kakade, J.) dated 16th September, 2003 shall continue to operate.

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